

Board deems necessary and proper. The Board shall inquire fully into all of the matters at issue and shall receive into evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the Board believes that there is relevant and material evidence available which has not been presented at the hearing, it may at any time prior to the mailing of notice of the decision, reconvene the hearing for the receipt of such evidence. The order in which the evidence and the allegations shall be presented and the conduct of the hearing shall be at the discretion of the Board.

**§ 405.1853 Prehearing discovery and other proceedings prior to the Board hearing.**

(a) Upon notification that a request for Board hearing has been filed, the intermediary shall forthwith review the materials submitted by the provider in accordance with § 405.1841. Simultaneously, the intermediary shall review the information which formed the basis for its determination of the amount of program reimbursement. Based on the findings of such review, the intermediary shall expeditiously attempt to join with the provider in written stipulations setting forth the issues that said review has resolved and designating the issues that remain for Board resolution. Having obtained such stipulations and being satisfied that no further agreements can be negotiated, the intermediary shall ensure that all available documentary evidence in support of each party's position is part of the record. Such evidence will ordinarily include a position paper from the provider, a position paper from the intermediary, and any documents which support the issues addressed in the stipulations. These materials, in addition to all relevant documents which formed the basis for its determination of the amount of program reimbursement, shall be forwarded to the Board within 60 days after the date of the provider's request for Board review.

(b) Prehearing discovery shall be permitted upon timely request of a party. To be timely, a request for discovery and inspection shall be made before the beginning of the hearing. A reasonable

time for inspection and reproduction of documents shall be provided by order of the Board. The Board's order on all discovery matters shall be final.

(c) If, in the discretion of the Board, the purpose of defining the issues more clearly would be served, the Board may schedule a prehearing conference. For this purpose, a single member of the Board may be appointed to act for the Board with respect to prehearing activities.

**§ 405.1855 Evidence at Board hearing.**

Evidence may be received at the Board hearing even though inadmissible under the rules of evidence applicable to court procedure. The Board shall give the parties opportunity for submission and consideration of facts and arguments and during the course of the hearing should, in ruling upon admissibility of evidence, exclude irrelevant, immaterial, or unduly repetitious evidence. The Board shall render a final ruling on the admissibility of evidence.

**§ 405.1857 Subpoenas.**

When reasonably necessary for the full presentation of a case, the Board may, either upon its own motion or upon the request of a party, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. Parties who desire the issuance of a subpoena shall, not less than 10 days prior to the time fixed for the hearing, file with the Board a written request therefor, designating the witnesses or documents to be produced, and describing the address, or location thereof with sufficient particularity to permit such witnesses or documents to be found. The request for a subpoena shall state the pertinent facts which the party expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpoena. Subpoenas, as provided for above, shall be issued in the name of the Board, and the Centers for Medicare & Medicaid Services shall assume the cost of the issuance and the